

1 STEVE W. BERMAN
(WA SBN 12536)
2 **HAGENS BERMAN SOBOL**
SHAPIRO LLP
3 1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
4 Telephone: (206) 268-9320
Facsimile: (206) 623-0594
5 Email: steve@hbsslaw.com

6 MARC M. SELTZER
(CA SBN 054534)
7 **SUSMAN GODFREY L.L.P.**
1901 Avenue of the Stars, Suite 950
8 Los Angeles, CA 90067
Telephone: (310) 789-3102
9 Facsimile: (310) 789-3006
Email: mseltzer@susmangodfrey.com

10 FRANK M. PITRE (CA SBN 100077)
11 **COTCHETT, PITRE**
& MCCARTHY
12 840 Malcolm Road, Suite 200
Burlingame, CA 94010
13 Telephone: (650) 697-6000
Facsimile: (650) 697-0577
14 Email: fpitre@cpmlegal.com

15 ***Co-Lead Plaintiffs' Counsel for***
16 ***Economic Loss Cases***

17 ELIZABETH J. CABRASER
(CA SBN 083151)
18 **LIEFF CABRASER HEIMANN**
& BERNSTEIN, LLP
19 275 Battery Street, Suite 3000
San Francisco, CA 94111
20 Telephone: (415) 956-1000
Facsimile: (415) 956-1008
Email: ecabraser@lchb.com

21 MARK P. ROBINSON, JR.
(CA SBN 54426)
22 **ROBINSON, CALCAGNIE**
& ROBINSON INC.
23 19 Corporate Plaza
Newport Beach, CA 92660
24 Telephone: (949) 720-1288
25 Facsimile: (949) 720-1292
Email: beachlawyer51@hotmail.com

26 ***Co-Lead Plaintiffs' Counsel for***
27 ***Personal Injury/Wrongful Death Cases***
28

CARI K. DAWSON (GA SBN 213490)
LISA GILFORD (CA SBN 171641)
ALSTON + BIRD LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100
Email: cari.dawson@alston.com
Email: lisa.gilford@alston.com

DOUGLAS R. YOUNG (CA SBN 73248)
C. BRANDON WISOFF (CA SBN 121930)
FARELLA BRAUN + MARTEL LLP
235 Montgomery Street, 30th Floor
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480
Email: dyoung@fbm.com
Email: bwisoff@fbm.com

THOMAS J. NOLAN (CA SBN 66992)
STEPHEN C. ROBINSON
(NY SBN 2150647)
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
300 South Grand Avenue
Los Angeles, CA 90071-3144
Telephone: (213) 687-5000
Facsimile: (213) 687-5600
Email: thomas.nolan@skadden.com
Email: stephen.robinson@skadden.com

Co-Lead Defense Counsel for Economic
Loss Cases

VINCENT GALVIN, JR. (CA SBN 104448)
JOEL SMITH (SC SBN 5266)
BOWMAN AND BROOKE
1741 Technology Drive, Suite 200
San Jose, CA 95110
Telephone: (408) 279-5393
Facsimile: (408) 279-5845
Email:
vincent.galvinjr@bowmanandbrooke.com
Email: joel.smith@bowmanandbrooke.com

Lead Defense Counsel for Personal
Injury/Wrongful Death Cases

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

4 IN RE: TOYOTA MOTOR CORP.
5 UNINTENDED ACCELERATION
6 MARKETING, SALES PRACTICES, AND
7 PRODUCTS LIABILITY LITIGATION

Case No.: 8:10ML2151 JVS (FMOx)

**STIPULATED ADDENDUM TO
FIRST AMENDED PROTECTIVE
ORDER TO FACILITATE NHTSA
PRODUCTION**

This document relates to:

8 ALL CASES

9
10 This is an action in which the Plaintiffs in the putative multi-district, class-
11 action litigation, *In re Toyota Motor Corporation Unintended Acceleration Marketing,*
12 *Sales Practices, and Products Liability Litigation*, Civil Action No. 10-ML-2151-NS
13 (FM0x) (C.D. Cal.) (“the Litigation”) have served a subpoena on third-party the
14 National Highway Traffic Safety Administration (“NHTSA”), an operating
15 component of the U.S. Department of Transportation (“DOT”) (the “subpoena”). A
16 copy of the subpoena is attached hereto as Exhibit “1.”

17 Counsel for the Plaintiffs and counsel for NHTSA have been engaging, and
18 continue to engage, in a good faith meet-and-confer process to attempt to narrow the
19 scope of the subpoena and resolve any disagreements between them. It is apparent,
20 however, that the subpoena calls for NHTSA to produce information that should be
21 protected from public disclosures, including, but not limited to, information protected
22 by the Privacy Act of 1974, 5 U.S.C. § 552a, trade secrets as contemplated by Federal
23 Rule of Civil Procedure 26(c)(1)(G), 49 U.S.C. § 30167, Exemption Four of the
24 Freedom of Information Act, 5 U.S.C. § 552(b)(4), and/or the Trade Secrets Act, 18
25 U.S.C. § 1905, and other non-disclosure statutes or common law exemptions that
26 protect from release personal privacy, trade secret, or deliberative information
27 (collectively “Confidential Material”).
28

1 NHTSA and the Parties wish to facilitate the production by and receipt of
2 information from NHTSA pursuant to Plaintiffs' subpoena by stipulating to this
3 Addendum to the existing First Amended Protective Order for the protection of
4 Confidential and Highly Confidential Materials (as defined therein), dated January
5 19, 2011 in the Litigation (the "First Amended Protective Order"). By stipulating to
6 this Addendum to the First Amended Protective Order, however, NHTSA in no way
7 accedes to the jurisdiction of the U.S. District Court for the Central District of
8 California for purposes of this subpoena and the Parties agree that the only proper
9 venue for any action related to the subpoena of NHTSA is the issuing Court, namely,
10 the U.S. District Court for the District of Columbia.

11 In order to permit the parties to have access to and use Confidential Material, as
12 justified, for purposes of the Litigation without undermining or waiving the legitimate
13 privacy concerns and without disclosing Confidential Material (as defined herein),
14 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is hereby
15 ORDERED:

16 1. "Confidential Material" as used herein means information the disclosure
17 of which to or by the receiving party would, in the good faith belief of NHTSA, result
18 in the disclosure of one or more of the following categories of information: (i)
19 proprietary, financial, technical, trade secret, or commercially sensitive information
20 within the meaning of Federal Rule of Civil Procedure 26(c)(1)(G); (ii) information
21 kept in a United States system of records that is subject to the provisions of the
22 Privacy Act, 5 U.S.C. § 552a; (iii) information entitled to confidentiality protection
23 under Exemption Four of the Freedom of Information Act, 5 U.S.C. § 552(a)(4) or 49
24 C.F.R. Part 512; (iv) information that NHTSA is otherwise prohibited or restricted
25 from releasing publicly pursuant to applicable statutes, regulations, or directives; (v)
26 information protected under other non-disclosure statutes or common law exemptions
27 that protect from release personal privacy, trade secret, or deliberative information;
28

1 and (vi) any other personal privacy information that may be protected from disclosure
2 by law. Subject to the provisions of Paragraph 10 below, information produced will be
3 deemed Confidential Material when so designated in the manner described in
4 Paragraph 5 below.

5 2. Notwithstanding the provisions set forth herein, which are intended to
6 address the specific concerns and statutory requirements relevant to NHTSA regarding
7 production of its Confidential Material, the Parties to the Litigation do not wish to
8 lessen or undermine the existing protections for production and receipt of the
9 confidential and highly confidential information of the Parties as set forth in the
10 existing First Amended Protective Order. The Parties have therefore agreed that, with
11 respect to information produced and designated as "NHTSA CONFIDENTIAL" or
12 "Subject to NHTSA Protective Order" by NHTSA pursuant to Paragraph 5 below, all
13 such information will be treated and maintained by the Parties as HIGHLY
14 CONFIDENTIAL under all applicable terms of the First Amended Protective Order
15 pending further review and agreement by the Parties and NHTSA.

16 3. Similarly, notwithstanding the provisions set forth herein, the Parties to
17 the Litigation do not wish to lessen or undermine the existing protections for
18 production and receipt of Toyota's source code and source code related material as
19 defined and as set forth in the existing First Amended Protective Order Governing the
20 Exchange and Handling of Source Code and Source Code Related Material dated
21 November 23, 2011 (the "Source Code Protective Order"). Accordingly, this Order
22 shall not apply to Toyota source code and source code related material, or similar
23 highly sensitive materials requiring special protection, the production and protection
24 of which, to the extent implicated by NHTSA's response to Plaintiffs' subpoena, shall
25 be subject to further review and agreement by NHTSA and the Parties prior to
26 production of any said source code or source code related material.

1 4. By this Protective Order, counsel for NHTSA is hereby authorized,
2 pursuant to 5 U.S.C. § 552a (b) (11) and consistent with 28 C.F.R. § 16.23, to release
3 information otherwise protected by the Privacy Act, 5 U.S.C. § 552a, provided that
4 the release of such information is reasonably related to the conduct of this Litigation.
5 Without limiting the generality of the foregoing, counsel for NHTSA may release to
6 counsel for Plaintiffs information covered by the Privacy Act whether such release is
7 pursuant to discovery or otherwise, for use only in the Litigation.

8 5. The designation of Confidential Material may be made by NHTSA by
9 placing or affixing prominently on produced documents containing Confidential
10 Material the word "NHTSA CONFIDENTIAL," or "Subject to NHTSA Protective
11 Order," indicating the confidential nature of the documents. Stamping the words
12 "NHTSA CONFIDENTIAL," or "Subject to NHTSA Protective Order," on the cover
13 of any multi-page document will designate all pages of the document as Confidential
14 Material, unless otherwise indicated by NHTSA. Any electronically stored
15 information, including electronically stored information produced in native file
16 format, may be designated Confidential Material by affixing a label on the disk or
17 other medium consistent with the above. Any summary, extract, paraphrase,
18 quotation, restatement, compilation, notes, or copy containing Confidential Material,
19 or any electronic image or database containing Confidential Material, will be subject
20 to the terms of this Order to the same extent as the material or information from
21 which such summary, extract, paraphrase, quotation, restatement, compilation, notes,
22 copy, electronic image, or database is derived.

23 6. When designating information as protected hereunder, NHTSA
24 represents thereby that it has done so in good faith and pursuant to a bona fide belief
25 that such information is deserving of protection. Counsel and parties are referred to
26 U.S. District Court for the District of Columbia Local Civil Rule 5.4(f) and that
27 court's "Notice Regarding Privacy and Public Access to Electronic Civil Case Files,"
28

1 dated September 2004 [available at http://www.dcd.uscourts.gov/dcd/civil_privacy
2 [notice](http://www.dcd.uscourts.gov/dcd/civil_privacy)], for typical examples of material deserving “protected” status.

3 7. Testimony regarding Confidential Material taken at a deposition,¹
4 conference, hearing or trial may be designated as Confidential Material by counsel by
5 making a statement to that effect on the record at the deposition or proceeding or in
6 writing no later than 30 days after receipt of the final transcript of the proceeding.
7 Other provisions for the handling of Confidential Material in depositions shall be
8 governed by Paragraph 6(b) of the First Amended Protective Order. Any filing of
9 Confidential Material shall be made in accordance with Paragraph 19 of the First
10 Amended Protective Order. Arrangements must be made with the Court for treatment
11 of any Confidential Material revealed at judicial proceedings taking place in court.
12 Arrangements must also be made with the court reporter taking and transcribing such
13 proceeding to separately bind, or otherwise segregate, such portions of the transcripts
14 containing Confidential Material, and to label such portions appropriately. Persons
15 other than persons authorized to receive access to Confidential Material will be
16 excluded from attendance during portions of depositions in this matter at which such
17 Confidential Material is shown or discussed.²

18 8. All counsel of record receiving copies of documents, transcripts,
19 responses to written questions, or any other material or information designated as
20 Confidential Material must maintain such Confidential Material in their possession in
21 a manner sufficient to protect such material against unauthorized disclosure. This
22 Order applies to all vendors, including without limitation, any copy service or
23

24 ¹ The parties to the Litigation agree to provide notice to NHTSA of any
25 deposition in which Confidential Material might be used or referenced to allow
26 NHTSA the opportunity to designate portions of the transcript “NHTSA
Confidential.”

27 ² This paragraph and its provisions in no way, however, create any assumption,
28 inference, or obligation that any NHTSA employee or former employee has been
authorized to provide testimony in the Litigation. *See United States Ex. Rel. Touhy v.*
Ragen, 340 U.S. 462 (1950); 49 C.F.R. §§ 9.11, 9.13.

1 document storage companies. It is the responsibility of counsel of record to take
2 reasonable steps to ensure that all of its vendors comply with this Order.

3 9. Confidential Material will be used solely for the purpose of conducting
4 the Litigation and not for any business or other purpose whatsoever by any person
5 having access to such material. Further, any disclosure of Confidential Material by
6 NHTSA in the Litigation does not constitute a public disclosure of the information
7 and does not waive or otherwise affect the rights, objections, or defenses of NHTSA
8 and/or of the owners or submitter(s) of the information in any other matter or
9 proceeding, including, but not limited to, 5 U.S.C. § 552, *et seq.*

10 10. Confidential Material provided formally or informally during the course
11 of this litigation shall be handled and disclosed by the parties only as follows:

- 12 a. Confidential Material may be used only for purposes of the
13 Litigation and shall not be given, shown, made available,
14 discussed, or otherwise communicated in any form to anyone other
15 than:
- 16 i. Plaintiffs and counsel for Plaintiffs, such counsel's firm and
17 its employees, and outside consultants and experts retained
18 by Plaintiffs to assist such counsel specifically for purposes
19 of this Litigation;
- 20 ii. Defendant and counsel for Defendant, such counsel's firm
21 and its employees, and outside consultants and experts
22 retained by Defendant to assist such counsel specifically for
23 purposes of this litigation;
- 24 iii. counsel for NHTSA and other employees of the United States
25 government who have a need to know the Confidential
26 Material for purposes of this Litigation;
- 27
28

- iv. witnesses and potential witnesses in this case whom counsel in good faith determine have a need to know the Confidential Material;
 - v. the person whose privacy interests are meant to be protected with respect to any particular document;
 - vi. court reporters who record and/or transcribe proceedings in this case; and
 - vii. the Court and its Clerk and other support personnel; and
 - viii. “Sharing Attorneys” as defined and set forth in Paragraph 13 of the First Amended Protective Order.
- b. It shall be the responsibility of counsel to bring this Order to the attention of all persons within their respective firms, all outside consultants and experts, and any other persons to whom they disclose protected information pursuant to the terms hereof, and to use their best efforts to insure that all such persons comply with this order.
 - c. The filing of materials containing Confidential Material shall conform with the provisions for filing Confidential Material or Highly Confidential Material set forth in Paragraph 19 of the First Amended Protective Order.
 - d. All material containing Confidential Material shall be clearly labeled as such and shall be returned to the party who originally produced the information or destroyed at the conclusion of the Litigation (including any and all appeals).
 - e. Counsel shall not reveal Confidential Material in any oral proceedings before the Court, including oral argument. If any counsel finds it necessary to refer to Confidential Material in any

1 oral proceeding, counsel shall notify the Court, NHTSA, and all
2 other counsel of record as soon as such necessity becomes apparent
3 and shall propose whatever mechanism(s) may be available and
4 appropriate to prevent disclosure of Confidential Material as a
5 consequence of such oral proceedings to persons other than those
6 authorized by this Order.

7 f. The use of Confidential Material to contact, solicit, or otherwise
8 communicate, orally or in writing, with a person is prohibited.

9 11. Counsel shall promptly report any breach of the provisions of this Order
10 to the Court and counsel for NHTSA and, where applicable, the party who originally
11 produced the Confidential Material that was improperly divulged or compromised.
12 Upon discovery of any breach, counsel shall immediately take appropriate action to
13 cure the violation and retrieve any Confidential Material that may have been disclosed
14 to persons not covered by this Order. Counsel shall also cooperate fully in any
15 investigation of such breach. Nothing contained in this order shall be deemed or relied
16 upon to create any right or benefit, substantive or procedural, for any person or entity
17 other than the parties to the above-captioned action.

18 12. By providing any document or other information in its possession,
19 NHTSA does not waive any privileges, objections, or protection otherwise afforded to
20 it by law or equity. All counsel shall promptly return to NHTSA any material that
21 NHTSA identifies as privileged material that has inadvertently been produced in this
22 action.

23 13. By agreeing to this Order, the parties do not waive any argument that a
24 privileged or protected document, as contemplated in Fed. R. Civ. P. 45, should not be
25 produced, in whole or in part. Similarly, the U.S. Government does not waive any
26 claim or argument that the subpoena is unduly burdensome, as contemplated in Fed.
27 R. Civ. P. 45.

1 14. Nothing contained herein shall restrict the government's use of its records
2 for official business or for other purposes consistent with other applicable laws and
3 regulations.

4 15. Any specific part or parts of the restrictions imposed by this Protective
5 Order may be terminated at any time by written agreement among each of the Parties
6 to the Litigation and NHTSA or by an Order of the Court.

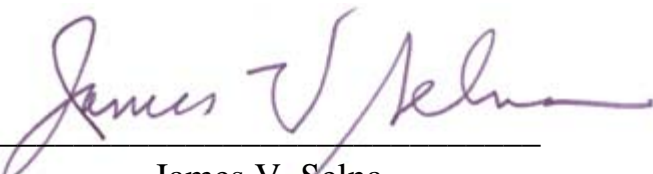
7 16. This Order is without prejudice to the rights of any party to make any
8 objection to discovery permitted by the Federal Rules of Civil Procedure, or by any
9 statute or other authority, or to the rights of any party to make evidentiary objections
10 at trial.

11 17. Nothing in this Order may be taken or construed as a ruling or statement
12 concerning the admissibility of any documents or information.

13 18. This Order is without prejudice to the rights of any party to seek from the
14 Court the modification of this Order.

15 IT IS SO ORDERED.

16
17 Dated: May 10, 2012



James V. Selna
United States District Judge

18
19
20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

Dated: May 9, 2012

Respectfully submitted,

By: _____/s/
Steve W. Berman

STEVE W. BERMAN
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 268-9320
Facsimile: (206) 623-0594
Email: steve@hbsslaw.com

MARC M. SELTZER
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067
Telephone: (310) 789-3102
Facsimile: (310) 789-3006
Email: mseltzer@susmangodfrey.com

FRANK M. PITRE
COTCHETT, PITRE & MCCARTHY
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
Email: fpitre@cpmlegal.com

***Co-Lead Plaintiffs' Counsel for Economic
Loss Cases***

ELIZABETH J. CABRASER
**LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP**
275 Battery Street, Suite 3000
San Francisco, CA 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
Email: ecabraser@lchb.com

MARK P. ROBINSON, JR.
ROBINSON, CALCAGNIE & ROBINSON INC.
19 Corporate Plaza
Newport Beach, CA 92660
Telephone: (949) 720-1288
Facsimile: (949) 720-1292
Email: beachlawyer51@hotmail.com

***Co-Lead Plaintiffs' Counsel for Personal
Injury/Wrongful Death Cases***

1 Dated: May 9, 2012

2 By: _____/s/
3 Cari K. Dawson

4 CARI K. DAWSON
5 LISA GILFORD
6 **ALSTON + BIRD LLP**
7 333 South Hope Street, 16th Floor
8 Los Angeles, CA 90071
9 Telephone: (213) 576-1000
10 Facsimile: (213) 576-1100
11 Email: cari.dawson@alston.com
12 Email: lisa.gilford@alston.com

13 DOUGLAS R. YOUNG
14 C. BRANDON WISOFF
15 **FARELLA BRAUN + MARTEL LLP**
16 235 Montgomery Street, 30th Floor
17 San Francisco, CA 94104
18 Telephone: (415) 954-4400
19 Facsimile: (415) 954-4480
20 Email: dyoung@fbm.com
21 Email: bwisoffW@fbm.com

22 THOMAS J. NOLAN
23 STEPHEN C. ROBINSON
24 **SKADDEN, ARPS, SLATE,**
25 **MEAGHER & FLOM LLP**
26 300 South Grand Avenue
27 Los Angeles, CA 90071-3144
28 Telephone: (213) 687-5000
Facsimile: (213) 687-5600
Email: thomas.nolan@skadden.com
Email: stephen.robinson@skadden.com

Co-Lead Defense Counsel for Economic Loss Cases

20 VINCENT GALVIN, JR.
21 JOEL SMITH
22 **BOWMAN AND BROOKE**
23 1741 Technology Drive, Suite 200
24 San Jose, CA 95110
25 Telephone: (408) 279-5393
26 Facsimile: (408) 279-5845
27 Email:
28 vincent.galvinjr@bowmanandbrooke.com
Email: joel.smith@bowmanandbrooke.com

***Lead Defense Counsel for Personal Injury/Wrongful
Death Cases***

1 Dated: May 9, 2012

2 By: _____/s/_____
Wynne P. Kelly

3 RONALD C. MACHEN, JR.
4 United States Attorney for the District of Columbia
DANIEL F. VAN HORN
5 Acting Chief, Civil Division
WYNNE P. KELLY
6 Assistant United States Attorney
555 4th Street, NW
7 Washington, DC 20530
Telephone: (202) 307-2332
8 Email: wynne.kelly@usdoj.gov

9 *Attorneys for NHTSA*